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7 **UNITED STATES DISTRICT COURT**  
8 **EASTERN DISTRICT OF CALIFORNIA**  
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11 MARAL ARTINE SAGHERIAN, ) Case No.: 1:20-cv-00340-BAM  
12 Plaintiff, )  
13 v. ) **ORDER REGARDING SOCIAL SECURITY**  
14 KILOLO KIJAKAZI, Acting Commissioner of ) **COMPLAINT**  
15 Social Security,<sup>1</sup> )  
16 Defendant. )  
17

18 **INTRODUCTION**

19 Plaintiff Maral Artine Sagherian (“Plaintiff”) seeks judicial review of a final decision of the  
20 Commissioner of Social Security (“Commissioner”) denying her application for disability insurance  
21 benefits under Title II of the Social Security Act and supplemental security income under Title XVI of  
22 the Social Security Act. The matter is currently before the Court on the parties’ briefs, which were  
23 submitted, without oral argument, to Magistrate Judge Barbara A. McAuliffe.<sup>2</sup>  
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27 <sup>1</sup> Kilolo Kijakazi became the Acting Commissioner of Social Security on July 9, 2021. Pursuant to Rule 25(d) of  
the Federal Rules of Civil Procedure, Kilolo Kijakazi is substituted for Andrew Saul as the defendant in this suit.

28 <sup>2</sup> The parties consented to have a United States Magistrate Judge conduct all proceedings in this case, including  
entry of final judgment, pursuant to 28 U.S.C. § 636(c). (Docs. 6, 9, 18.)

1 Having considered the briefing and record in this matter, the Court finds the decision of the  
 2 Administrative Law Judge (“ALJ”) to be supported by substantial evidence in the record as a whole  
 3 and based upon proper legal standards. Accordingly, this Court affirms the agency’s determination to  
 4 deny benefits.

### 5 **FACTS AND PRIOR PROCEEDINGS**

6 Plaintiff filed applications for disability insurance benefits and supplemental security income  
 7 on September 6, 2016. AR 284-87, 288-97.<sup>3</sup> Plaintiff alleged that she became disabled on October  
 8 16, 2015, due to chronic psoriatic arthritis, depression, and anxiety. AR 288, 344. Plaintiff’s  
 9 applications were denied initially and on reconsideration. AR 166-70, 177-82. Subsequently, Plaintiff  
 10 requested a hearing before an ALJ. ALJ Sharon Madsen held a hearing on October 4, 2018. AR 41-  
 11 68. ALJ Madsen issued an order denying benefits on December 20, 2018. AR 18-34. Plaintiff sought  
 12 review of the ALJ’s decision, which the Appeals Council denied, making the ALJ’s decision the  
 13 Commissioner’s final decision. AR 6-10. This appeal followed.

### 14 **Hearing Testimony**

15 The ALJ held a hearing on October 4, 2018, in Fresno, California. Plaintiff appeared at the  
 16 hearing with her attorney, Melissa Proudian. AR 43. Paul Stanford, an impartial vocational expert,  
 17 also appeared and testified. AR 43, 432.

18 In response to questions from the ALJ, Plaintiff testified that she lives with her mom and  
 19 receives general relief and food stamps. She has a driver’s license, but she does not drive. She  
 20 completed high school and later obtained a medical assistant diploma. AR 45-46.

21 When asked about her daily activities and abilities, Plaintiff testified that she does not currently  
 22 need help showering or dressing. In the past, she could not do anything for herself, and her mom and  
 23 brother had to help her out of bed. AR 46, 53. She does not cook or do household chores, but she will  
 24 make her bed. Her mom helps with shopping. She visits with family occasionally. AR 46.

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 28 <sup>3</sup> References to the Administrative Record will be designated as “AR,” followed by the appropriate page number.

1 On a typical day, she mostly rests. She tries to walk around the house to move her joints, but  
2 then will need to lie back down and will watch a little TV. She will sometimes be on her phone. She  
3 takes naps. Her medications make her drowsy. AR 47.

4 When asked about her past work, Plaintiff testified that she worked full time for Supplemental  
5 Health Care at a prison. It was medical records/assistant job, mainly with paperwork and phone calls.  
6 She last worked as a manager at Long John Silver's, where she cleaned, answered phone calls,  
7 handled customers and schedules, cooked, cashiered and conducted inventory. AR 47-49.

8 When asked about her medical issues, Plaintiff confirmed that she has psoriatic arthritis. She  
9 mainly feels pain in her feet, hips and back. Her feet also swell constantly, and she has to sit with her  
10 feet elevated. Elevating her feet or putting them in hot water helps with the pain. She does not have  
11 skin issues, but she gets rashes and itching from the immune suppresser medication that she takes.  
12 The medication helps a little bit with pain. Her Celebrex does not help much with pain, but the  
13 Tramadol helps a bit. She takes naproxen anti-inflammatory pills and uses a steroid cream. She has  
14 gone through six or seven immune suppressers and they all gave her bad side effects. They are going  
15 to keep trying different medications. AR 49-52. Plaintiff testified that she sometimes has flares, with  
16 pain and swelling, which usually happens when it is cold. It is better in the summer, but she gets more  
17 rashes on her skin. AR 52-53.

18 When asked about her abilities, Plaintiff testified that she could probably lift a bag of chips.  
19 She can sit for 30 minutes before she will need to stand for 5 minutes. She can walk half of a block,  
20 up to a five-minute walk. It takes her a long time to put on shoes and socks. She cannot climb stairs.  
21 AR 53-55.

22 When asked about her depression and anxiety, Plaintiff testified that she cries a lot even if she  
23 takes her medication. She takes Lexapro, which helps a tiny bit. She gets really anxious around a big  
24 group or people. She thought the arthritis might be giving her anxiety. She gets along with people  
25 that she knows, but she gets anxious around crowds. She sometimes has difficulty paying attention to  
26 the TV. She can pay her own bills. AR 55-56.

1 When asked about her hammertoes, Plaintiff testified that the pain in her feet feels like it is  
2 caused by her hammertoes and by the psoriasis. She had surgery at one time and has been referred to  
3 a podiatrist. The rheumatologist thinks she may need another surgery. AR 57.

4 In response to questions from her counsel, Plaintiff testified that she probably rests all day.  
5 She will get up for water, medication, and something to eat. She takes a shower once a week because  
6 it hurts to shower every day. It also is hard for her to change clothes every day. AR 58-59.

7 Plaintiff explained that she is going to have more surgery on her foot because her four toes are  
8 bent, where the arthritis is hitting. The immune suppresser is to prevent the arthritis from moving to  
9 other parts of her body. She has to be on an immune suppresser despite the side effects. She has been  
10 on the last immune suppressor for about two years and has had side effects the entire time. She feels  
11 nauseous and drowsy. She was sick the month prior and was throwing up violently. AR 59-61.

12 When asked about her pain, Plaintiff testified that standing too long aggravates her pain, along  
13 with cold weather. She is not sure if she could walk on uneven surfaces, like grass or gravel. She  
14 cannot kneel, squat, or reach overhead. She can reach out in front at shoulder level. AR 62-63. When  
15 she is depressed, she will isolate. She will try to put on makeup whenever she feels okay. Her goal is  
16 to try to put it on at least twice a month. Last time, she stopped because she did not have energy and  
17 was in pain. She has days that she cannot get out of bed with severe joint pain. It happens about two  
18 weeks out of the month. AR 63-65.

19 Following Plaintiff's testimony, the ALJ elicited testimony from the VE. The VE categorized  
20 Plaintiff's past work as medical records clerk and manager, fast food services. AR 65-66. The ALJ  
21 also asked the VE hypotheticals. For the first hypothetical, the ALJ asked the VE to assume a person  
22 of the same age, education and work background who could lift and carry 10 pounds occasionally and  
23 frequently, could sit six to eight, stand or walk two, with occasional stooping, crouching, crawling,  
24 climbing, and kneeling, need to avoid extreme cold, and limited to simple, routine tasks. The VE  
25 testified that there would be jobs for this person, such as document preparer, addresser, and assembler.  
26 AR 66.

27 For the second hypothetical, the ALJ asked the VE to add occasional public contact. The VE  
28 testified that this did not change the answer. AR 67.

1 For the third hypothetical, the ALJ asked the VE to add to either of the hypotheticals that the  
2 person would need an additional two-to-four breaks of 30 minutes per day. The VE testified that this  
3 would eliminate all work. AR 67.

4 Following the ALJ's questions, Plaintiff's attorney asked the VE to consider hypothetical one,  
5 but the individual would miss two to three days per month. The VE testified that this would eliminate  
6 all work. AR 67.

### 7 **Medical Record**

8 The relevant medical record was reviewed by the Court and will be referenced below as  
9 necessary to this Court's decision.

### 10 **The ALJ's Decision**

11 Using the Social Security Administration's five-step sequential evaluation process, the ALJ  
12 determined that Plaintiff was not disabled under the Social Security Act. AR 21-34. Specifically, the  
13 ALJ found that Plaintiff had not engaged in substantial gainful activity since October 16, 2015, the  
14 alleged onset date. AR 23. The ALJ identified the following severe impairments: psoriatic arthritis,  
15 obesity, hammertoes, depressive disorder, and anxiety disorder. AR 23-24. The ALJ determined that  
16 the severity of Plaintiff's impairments did not meet or equal any of the listed impairments. AR 24-26.

17 Based on a review of the entire record, the ALJ found that Plaintiff retained the residual  
18 functional capacity ("RFC") to perform less than the full range of sedentary work. She could lift  
19 and/or carry ten pounds occasionally and ten pounds frequently, could stand and/or walk for two hours  
20 out of an eight-hour workday, could sit for six to eight hours out of an eight-hour workday, could  
21 occasionally stoop, crouch, crawl, climb and kneel, must avoid exposure to extreme cold and was  
22 limited to simple, routine tasks. AR 26-33. With this RFC, the ALJ found that Plaintiff could not  
23 perform any past relevant work, but could perform other jobs in the national economy, such as  
24 document preparer, addresser, and assembler. AR 33-34. The ALJ therefore concluded that Plaintiff  
25 was not disabled. AR 34.

### 26 **SCOPE OF REVIEW**

27 Congress has provided a limited scope of judicial review of the Commissioner's decision to  
28 deny benefits under the Act. In reviewing findings of fact with respect to such determinations, this

1 Court must determine whether the decision of the Commissioner is supported by substantial evidence.  
 2 42 U.S.C. § 405(g). Substantial evidence means “more than a mere scintilla,” *Richardson v. Perales*,  
 3 402 U.S. 389, 402 (1971), but less than a preponderance. *Sorenson v. Weinberger*, 514 F.2d 1112,  
 4 1119, n. 10 (9th Cir. 1975). It is “such relevant evidence as a reasonable mind might accept as  
 5 adequate to support a conclusion.” *Richardson*, 402 U.S. at 401. The record as a whole must be  
 6 considered, weighing both the evidence that supports and the evidence that detracts from the  
 7 Commissioner’s conclusion. *Jones v. Heckler*, 760 F.2d 993, 995 (9th Cir. 1985). In weighing the  
 8 evidence and making findings, the Commissioner must apply the proper legal standards. *E.g.*,  
 9 *Burkhart v. Bowen*, 856 F.2d 1335, 1338 (9th Cir. 1988). This Court must uphold the Commissioner’s  
 10 determination that the claimant is not disabled if the Commissioner applied the proper legal standards,  
 11 and if the Commissioner’s findings are supported by substantial evidence. *See Sanchez v. Sec’y of*  
 12 *Health and Human Servs.*, 812 F.2d 509, 510 (9th Cir. 1987).

### 13 REVIEW

14 In order to qualify for benefits, a claimant must establish that he or she is unable to engage in  
 15 substantial gainful activity due to a medically determinable physical or mental impairment which has  
 16 lasted or can be expected to last for a continuous period of not less than twelve months. 42 U.S.C. §  
 17 1382c(a)(3)(A). A claimant must show that he or she has a physical or mental impairment of such  
 18 severity that he or she is not only unable to do his or her previous work, but cannot, considering his or  
 19 her age, education, and work experience, engage in any other kind of substantial gainful work which  
 20 exists in the national economy. *Quang Van Han v. Bowen*, 882 F.2d 1453, 1456 (9th Cir. 1989). The  
 21 burden is on the claimant to establish disability. *Terry v. Sullivan*, 903 F.2d 1273, 1275 (9th Cir.  
 22 1990).

### 23 DISCUSSION<sup>4</sup>

24 Plaintiff contends that the ALJ committed harmful error by failing to provide clear and  
 25 convincing reasons to reject her symptom testimony. Plaintiff further contends that the ALJ erred by  
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27 <sup>4</sup> The parties are advised that this Court has carefully reviewed and considered all of the briefs, including arguments,  
 28 points and authorities, declarations, and/or exhibits. Any omission of a reference to any specific argument or brief is not to be construed that the Court did not consider the argument or brief.

1 rejecting the medical source statement of her rheumatological specialist and by rejecting the opinion of  
2 the examining psychiatric physicians.

### 3 **A. Plaintiff's Subjective Complaints**

4 Plaintiff initially contends that the ALJ committed harmful error by failing to provide clear and  
5 convincing reasons for rejecting her symptom evidence “of severe pain and limitation, preventing  
6 sustained work activity, due to psoriatic arthritis, hammertoes and depression/anxiety.” (Doc. 22 at  
7 21.)

8 In deciding whether to admit a claimant's subjective complaints, the ALJ must engage in a  
9 two-step analysis. *Garrison v. Colvin*, 759 F.3d 995, 1014 (9th Cir. 2014); *Batson v. Comm'r of Soc.*  
10 *Sec. Admin.*, 359 F.3d 1190, 1196 (9th Cir. 2004). First, the claimant must produce objective medical  
11 evidence of her impairment that could reasonably be expected to produce some degree of the symptom  
12 or pain alleged. *Garrison*, 759 F.3d at 1014. If the claimant satisfies the first step and there is no  
13 evidence of malingering, the ALJ may reject the claimant's testimony regarding the severity of her  
14 symptoms only by offering specific, clear and convincing reasons for doing so. *Id.* at 1015.

15 Here, the ALJ found that Plaintiff's medically determinable impairments could reasonably be  
16 expected to cause the alleged symptoms, but discounted her statements concerning the intensity,  
17 persistence and limiting effects of those symptoms. AR 27. The ALJ was therefore required to  
18 provide specific, clear and convincing reasons for discounting Plaintiff's subjective complaints.

19 The ALJ first found that despite Plaintiff's alleged impairments, she had engaged in  
20 “somewhat normal level of daily activity and interaction.” AR 27. An ALJ may properly discount a  
21 claimant's subjective complaints when the daily activities demonstrate an inconsistency between what  
22 the claimant can do and the degree that disability is alleged. *Molina v. Astrue*, 674 F.3d 1104, 1112–13  
23 (9th Cir. 2012) (an ALJ may consider “whether the claimant engages in daily activities inconsistent  
24 with the alleged symptoms”), *superseded by regulation on other grounds*. The ALJ cited Plaintiff's  
25 ability to shower, clean her room, make the bed, visit with family, watch television, spend time on the  
26 phone, and handle money, along with the fact that she lived with her family and had no problem  
27 getting along with family, friends, neighbors, or others, and following instructions. AR 27, 46-47, 56.  
28 27, 334-36, 383-84. She also admitted to exercising at a moderate activity level. AR 27, 791.

1 Although the ALJ concluded that the physical and mental capabilities for these tasks and social  
2 interactions replicated capabilities needed to obtain and maintain employment (AR 27), the Court  
3 finds that Plaintiff's minimal activities do not appear to meet the threshold for transferable work skills  
4 with respect to her physical activities. *Orn v. Astrue*, 495 F.3d 625, 639 (9th Cir. 2007) (finding  
5 reading, watching television, and coloring in coloring books so undemanding that they cannot be said  
6 to bear a meaningful relationship to the activities of the workplace). Plaintiff's limited ability to  
7 shower, make her bed, and watch television are not sufficiently demanding and do not bear a  
8 meaningful relationship to the activities of the workplace. The Court therefore finds the ALJ's  
9 conclusion that these tasks are transferable to the positions of document preparer, addresser, or  
10 assembler is not supported by substantial evidence. The Court acknowledges the ALJ's reference to a  
11 notation in Plaintiff's records identifying a moderate activity level in January 2016, (AR 27, 791), but  
12 finds this single reference insufficient. The ALJ proffers no other basis to demonstrate that Plaintiff's  
13 physical activities are necessarily demanding such that they translate to the activities of a workplace.  
14 Even if this reason for discounting Plaintiff's testimony is inadequate, however, there are sufficient  
15 other reasons provided to support the assessment of Plaintiff's subjective complaints. *See Batson*,  
16 359 F.3d at 1197.

17 For example, the ALJ found that Plaintiff's allegations of disabling symptoms and limitations  
18 were not supported by the medical findings. AR 28. Although lack of supporting medical evidence  
19 cannot form the sole basis for discounting testimony, it is a factor that the ALJ can consider. *See*  
20 *Burch v. Barnhart*, 400 F.3d 676, 681 (9th Cir. 2005). With respect to Plaintiff's allegations of  
21 disabling physical limitations from her psoriatic arthritis, the ALJ determined that Plaintiff's physical  
22 examinations and objective tests revealed many negative findings, and any positive findings were  
23 often mild and never more than moderate. AR 28. According to the record, on October 1 and 4, 2015,  
24 Plaintiff's musculoskeletal joint exam was unremarkable. She had no pedal edema, clubbing or  
25 cyanosis. AR 28, 457, 1181. On October 14, 2015, Plaintiff had no pedal edema, no clubbing or  
26 cyanosis. She had tender medial "scap" borders bilaterally, her knees, ankles, and feet were okay, and  
27 she had "[s]ome tenderness and mild swelling occ toes bilat feet" and "[m]ild noted left 1<sup>st</sup> and [right]  
28 2<sup>nd</sup> and 4<sup>th</sup>." AR 478. On October 21, 2015, Plaintiff had only mild changes to her toes, no pedal



1 edema, clubbing or cyanosis.<sup>5</sup> AR 505. On November 13, 2015, Plaintiff had only mild paraspinal  
2 tenderness, multiple joint tenderness, no obvious swelling or deformity, and mild thoracic paraspinal  
3 tenderness. AR 551. On December 1, 2015, Plaintiff no pedal edema, no clubbing or cyanosis, she  
4 had “1+ swelling of the IP joint of the left 1<sup>st</sup> toe and minimal swelling and discomfort of the L 2<sup>nd</sup> IP  
5 joint-minimal loss of mobility of the neck,” no peripheral swelling or synovitis of the hands, wrists,  
6 elbows, shoulders or knees, her peripheral pulses were normal, and she had no pedal edema, no  
7 clubbing or cyanosis. AR 28, 604. On December 4, 2015, Plaintiff had left hallux PIP J pain.  
8 Surgery was recommended to fuse the joint in her toe. AR 611, 635.

9 On January 23, 2016, a foot x-ray showed right second toe with soft tissue swelling without  
10 underlying bony abnormality, left first IP joint osteoarthropathy and subluxation, and bilateral mild  
11 pes planus. AR 28, 752. A lumbar spine x-ray was normal. AR 28, 753-54. On January 25, 2016,  
12 Plaintiff underwent surgery, first ray arthrodesis, hallux interphalangeal joint (left) on her foot. AR  
13 768. Plaintiff was repeatedly noted to be doing satisfactory post-operation. AR 28, 870, 937, 1048,  
14 1083-84, 1095, 1103, 1106, 2690. An x-ray of her left foot on March 9, 2016, was unremarkable.  
15 AR 940. On February 17, 2016, Plaintiff had a swollen 2<sup>nd</sup> toe (sausage) on her right with swelling  
16 extending over the distal metatarsal. AR 859.

17 On March 5, 2016, Plaintiff sought emergency room treatment for right ankle/foot pain and  
18 swelling, localized to the right toe. AR 889, 891. However, on examination, she only had mild  
19 swelling with redness of her right foot and an x-ray showed nonspecific soft tissue swelling about the  
20 foot and no displaced fracture. AR 29, 893, 899. Plaintiff’s foot improved with medication and an  
21 examination on March 9, 2016, showed only mild swelling. AR 933. On March 15, 2016, she had  
22 mild swelling of her ankles and tenderness, along with “mtp right 2-5 swelling, tender” and no “toe  
23 sausaging.” AR 29, 948. On April 5, 2016, Plaintiff had multiple joint tenderness, but no obvious  
24 swelling or deformity. AR 29, 1041. A June 1, 2016 x-ray of her bilateral feet showed no significant  
25 arthritic changes with joint space narrowing or osteophyte formation. AR 3163. On July 19, 2016,  
26 Plaintiff’s examination showed “right 2<sup>nd</sup> mcp tender” with no swelling, right ankle “mild  
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28 <sup>5</sup> Plaintiff’s pain was noted to be out of proportion to what her treating physician could see. AR 504.

1 warmth/swelling, tender,” “[f]orefeet and toes with mcp and ip [swelling], tenderness,” and “some  
2 sausage digits.” AR 1087. On November 15, 2017, Plaintiff had mild dactylitis of the bilateral toes  
3 with tenderness on palpation and multiple tender points all over the body. AR 3140. On December  
4 14, 2017, Plaintiff had multiple tender points all over the body, but a musculoskeletal exam was normal.  
5 AR 3131. On February 7, 2018, Plaintiff was negative for cyanosis and edema. A musculoskeletal  
6 exam was normal. She had hammertoes bilaterally, mild dactylitis in the toes bilaterally and multiple  
7 tender points all over the body. AR 3123-24. On February 12, 2018, Plaintiff had a normal range of  
8 motion, normal gait, and no edema. AR 3115. On May 1, 2018, Plaintiff had normal range of motion,  
9 no edema, no tenderness to joints, and a normal motor and sensory examination, but was sitting in a  
10 wheelchair. AR 3087-88. On May 12, 2018, Plaintiff was ambulating without difficulty, negative for  
11 cyanosis and edema, and had 5/5 motor strength in all extremities. She had hammertoes bilaterally,  
12 mild dactylitis in the toes bilaterally and multiple tender points all over the body. AR 3104-05. On  
13 May 29, 2018, Plaintiff had normal range of motion, no edema, no tenderness to joints, but was sitting  
14 in a wheelchair and ambulating with a walker in the clinic. AR 3085. On August 5, 2018, Plaintiff  
15 was ambulating without difficulty, and was negative for cyanosis and edema, with 5/5 motor strength  
16 in all extremities. She had hammertoes bilaterally and multiple tender points all over her body. AR  
17 30, 3092-93.

18 Based on the above, the Court finds the ALJ’s determination that Plaintiff’s physical  
19 examinations and objective tests revealed many negative findings, and any positive findings were  
20 often mild and never more than moderate, is supported by substantial evidence.

21 With respect to Plaintiff’s allegations of disabling mental impairments, the ALJ determined  
22 that Plaintiff had many negative and normal mental status findings throughout the record. AR 30. As  
23 noted by the ALJ, on October 14, 2015, Plaintiff loudly declaimed depression, and her mental status  
24 examination was normal. AR 30, 475, 478. She again denied depression on October 21, 2015. AR  
25 504-05. Although diagnosed with major depression, single episode, depressive disorder due to another  
26 medical condition with major depressive like episode, and anxiety disorder due to another medical  
27 condition, the ALJ correctly noted that Plaintiff’s mental status evaluations were generally within  
28 normal limits between November 19, 2015, and August 24, 2017. AR 30, 558-59, 2729, 3165. For

1 instance, on March 5, 2016, Plaintiff was negative for depression, and not nervous/anxious, with  
2 normal mood, affect, judgment and thought content. AR 890, 893. On September 15, 2016,  
3 Plaintiff's mental status examination was generally normal, with a sad mood, but normal thought  
4 content, attention, and concentration, and good impulse control, insight, and judgment. AR 2729. On  
5 September 19, 2016, Plaintiff's mental status examination was generally normal. She had a depressed  
6 mood, but she smiled and engaged more and laughed throughout therapy. AR 2742. On September  
7 27, 2016, Plaintiff had a depressed and anxious mood, but her thought content was normal, she was  
8 fully oriented, her attention and concentration were within normal limits and her impulse control,  
9 insight and judgment were good. AR 2756. On September 29, 2016, her mental status examination  
10 only noted a depressed mood. AR 2931. On October 4, 2016, Plaintiff had a depressed mood, but her  
11 affect was full range and appropriate. AR 2774. Mental status examinations on October 11 and 20,  
12 and November 1 and 8, 2016, were generally normal. AR 2794-95, 2809, 2854, 2864. Plaintiff's  
13 remaining status examinations on December 1, 2016, and January 4, February 14, March 15 April 19,  
14 May 17 and 26, June 23 and 26, July 21, and August 24, 2017, were generally normal. AR 2891,  
15 3166-67, 3183-84, 3194, 3203, 3218, 3226, 3234, 3242, 3250, 3260.

16 The ALJ also considered that Plaintiff received routine, conservative and non-emergency  
17 treatment since the alleged onset date. AR 28. An ALJ is permitted to consider evidence of  
18 conservative treatment in evaluating a claimant's subjective complaints. *See Parra v. Astrue*, 481 F.3d  
19 742, 750-51 (9th Cir. 2007) (finding evidence of conservative treatment sufficient to discount  
20 claimant's testimony regarding severity of impairment). According to the record, Plaintiff's  
21 treatments consisted of physical therapy and acupuncture, pain medication, and injections and oral  
22 medications to treat her psoriatic arthritis. AR 662-63 (physical therapy), 1087 (oral medications and  
23 injections), 1093 (acupuncture for ankle and feet pain, found helpful), 1099 (acupuncture), 1152 (oral  
24 medication), 1158 (physical therapy), 3085 (oral medications), 3103 (detailing attempted  
25 rheumatology medications). Plaintiff underwent surgery in January 2016 for a joint in her left toe, but  
26 she was repeatedly noted to be doing satisfactory post-operation. AR 28, 870, 937, 1048, 1083-84,  
27 1095, 1103, 1106, 2690. Further, Plaintiff's sole visit to the emergency room in March 2016 does not  
28 undermine the ALJ's conclusion, as the emergency room findings and x-rays showed only mild

1 swelling with redness of her right foot and nonspecific soft tissue swelling about the foot and no  
2 displaced fracture. AR 893, 899.

3 The Court therefore concludes that the ALJ did not commit reversible error in evaluating  
4 Plaintiff's subjective complaints.

5 **B. Evaluation of Treating Rheumatologist – Dr. Jeffrey Fong, M.D.**

6 Plaintiff contends that the ALJ erred by rejecting the opinion of Plaintiff's treating  
7 rheumatological specialist, Dr. Jeffrey Fong.

8 On March 15, 2016, Dr. Fong wrote a letter indicating that Plaintiff had some chronic active  
9 medical conditions, and he was treating her for psoriatic arthritis. Dr. Fong opined that Plaintiff was  
10 "currently unable to work due to" her psoriatic arthritis and was "likely to be permanently affected."  
11 AR 446.

12 On March 24, 2017, Dr. Fong wrote another letter on behalf of Plaintiff. Dr. Fong indicated  
13 that Plaintiff had "a chronic medical condition that [was] preventing her from working." AR 3078.  
14 Dr. Fong did not think that Plaintiff would be able to work for a least another 1 year. He reported  
15 treating Plaintiff for "severe Psoriatic arthritis which has been resistant to multiple medicines so far."  
16 *Id.*

17 On January 31, 2017, Dr. Fong completed a Physical Medical Source Statement form. He  
18 identified Plaintiff's symptoms from psoriatic arthritis as severe pain and some swelling. On her last  
19 visit, he noted findings of a tender left knee, tender bilateral ankles and hind foot, swelling and tender  
20 at MTP 235 and 23LMTP, with "sausage toes" both feet. AR 3080. He opined that Plaintiff could  
21 walk less than one block without rest or severe pain. She could sit more than 2 hours at one time, but  
22 only stand 10 minutes at one time. In an 8-hour working day, she could sit at least 6 hours. AR 3080.  
23 When standing, a cane or other hand-held assistive device would be helpful, but it was not necessary.  
24 She could lift 10 pounds frequently, but she could not carry. She could frequently twist and  
25 stoop(bend), but could never crouch/squat, climb stairs, or climb ladders. AR 3081. He suspected she  
26 was likely to be off task 15% and opined that she likely would be absent from work as a result of her  
27 impairments or treatment more than four days per month. AR 3082.

Cases in this circuit identify three types of physicians: (1) those who treat the claimant (treating physicians); (2) those who examine but do not treat the claimant (examining physicians); and (3) those who neither examine nor treat the claimant (nonexamining physicians). *Lester v. Chater*, 81 F.3d 821, 830 (9th Cir. 1995). As a general rule, more weight should be given to the opinion of a treating source than to the opinions of doctors who do not treat the claimant. *Id.* Where a treating physician's opinion is not contradicted by another doctor, it may be rejected only for "clear and convincing" reasons. *Id.* If the treating physician's opinion is contradicted by another doctor, the Commissioner must provide "specific and legitimate" reasons supported by substantial evidence in the record to reject this opinion. *Id.* "The medical opinion of a claimant's treating physician is given 'controlling weight' so long as it 'is well-supported by medically acceptable clinical and laboratory diagnostic techniques and is not inconsistent with the other substantial evidence in [the] case record.'" *Trevizo v. Berryhill*, 871 F.3d 664, 675 (9th Cir. 2017) (quoting 20 C.F.R. § 404.1527(c)(2)).

In this instance, Dr. Fong's treating opinion was contradicted by the opinions of the state agency medical consultants, Drs. E. Wong and W. Jackson. Drs. Wong and Jackson both opined that Plaintiff could lift and/or carry 10 pounds occasionally, 10 pounds frequently, could stand and/or walk 2 hours, and could sit about 6 hours in an 8-hour workday. She was limited in pushing and/or pulling in her lower extremities, and she could occasionally climb ramps/stairs, occasionally climb ladders/ropes/scaffolds, and occasionally balance, stoop, kneel, crouch and crawl. AR 101-02, 118-19, 136-37, 152-53. In light of these opinions, the ALJ was required to provide specific and legitimate reasons supported by substantial evidence in the record to discount Dr. Fong's opinion.

In evaluating Dr. Fong's opinion, the ALJ reasoned as follows:

The undersigned has considered and gives little weight to J. Fong, M.D., who made a disability statement based upon psoriatic arthritis on March 15, 2016 and March 24, 2017, and filled out a residual functional capacity questionnaire on January 31, 2017 (Exhibits 1F 13F, and 14F). The undersigned has given little weight to this opinion because it is not supported by objective evidence and it is inconsistent with the record as a whole. As an opinion on an issue reserved to the Commissioner, this statement is not entitled to controlling weight and is not given special significance pursuant to 20 CFR 404.1527(d) and 416.927(d) and SSR 96-5. Dr. Fong primarily summarized in the treatment notes the claimant's subjective complaints, diagnoses, and treatment, but did not provide objective clinical or diagnostic findings to support the functional assessment. This opinion is inconsistent with the objective findings already discussed above in this decision, which

1 show many mild and moderate findings. This opinion is also inconsistent with the  
2 claimant's admitted activities of daily living that have already been described above in this  
decision. Therefore, this is given little weight.

3 AR 31.

4 Having considered the record, the Court finds that the ALJ provided specific and legitimate  
5 reasons supported by substantial evidence to assign little weight to Dr. Fong's opinions. As one  
6 reason, the ALJ properly discounted Dr. Fong's March 2016 and March 2017 letters, which stated that  
7 Plaintiff was unable to work, because those statements were opinions on an issue reserved to the  
8 Commissioner. AR 31. A physician's opinion on the ultimate issue of disability is not entitled to  
9 controlling weight because statements "by a medical source that [a claimant is] 'disabled' or 'unable  
10 to work'" "are not medical opinions" under the Social Security regulations. 20 C.F.R. §§ 404.1527(d),  
11 416.927(d). An ALJ "is precluded from giving any special significance to the source; e.g., giving a  
12 treating source's opinion controlling weight" when it is on an issue reserved to the Commissioner,  
13 such as the ultimate issue of disability. SSR 96-5p, 1996 WL 374183 at \*3 (July 2, 1996); *McLeod v.*  
14 *Astrue*, 640 F.3d 881, 885 (9th Cir. 2011) ("[t]he law reserves the disability determination to the  
15 Commissioner"); *Martinez v. Astrue*, 261 Fed.App'x 33, 35 (9th Cir. 2007) ("the opinion that [a  
16 claimant] is unable to work is not a medical opinion, but is an opinion about an issue reserved to the  
17 Commissioner. It is therefore not accorded the weight of a medical opinion").

18 Second, the ALJ discounted Dr. Fong's opinion as unsupported by objective clinical or  
19 diagnostic findings in his treatment records. AR 31. An ALJ may properly reject a treating  
20 physician's opinion that is unsupported by clinical findings. *See Chaudhry v. Astrue*, 688 F.3d 661,  
21 671 (9th Cir. 2012); *Bray v. Comm'r of Soc. Sec. Admin.*, 554 F.3d 1219, 1228 (9th Cir. 2009) (ALJ  
22 need not accept the opinion of any physician, including a treating physician, if that opinion, is brief,  
23 conclusory, and inadequately supported by clinical findings"); *Connett v. Barnhart*, 340 F.3d 871, 875  
24 (9th Cir. 2003) (upholding rejection of treating physician's opinion as his own treatment notes did not  
25 support extensive conclusions regarding the claimant's limitations). Here, Dr. Fong's opinion,  
26 contained in a check-the-box form, was permissibly rejected as inadequately supported by clinical  
27 findings, which revealed only tenderness and some swelling. *See Ford v. Saul*, 950 F.3d 1141, 1155  
28

(9th Cir. 2020) (finding ALJ properly discounted physician’s opinion in check-the-box questionnaire that failed to provide support for stated limitations). Further, according to the record, Dr. Fong only examined Plaintiff on three occasions between October 2015 and July 2016 with minimal findings. (Doc. 22 at 7-9.) As discussed above, on October 14, 2015, Dr. Fong found “[t]ender medial scap boarders” bilaterally, minimally tender thoracic spine, shoulders tender bilaterally with ok motion and no swelling. Her knees, ankles and midfoot/hindfoot were “ok,” and she had “[s]ome tenderness and mild swelling occ toes bilat feet” and [m]ild noted left 1<sup>st</sup> and [right] 2<sup>nd</sup> and 4<sup>th</sup>.” AR 478. On March 15, 2016, Dr. Fong found only “mild fullness” and minimal tenderness of her left wrist, mild swelling and tenderness in her ankles, and “mtp right 2-5” swelling and tenderness with no “toe sausaging.” AR 948. Dr. Fong indicated that he would help with the psoriatic arthritis problem “as best [he] could from a distance.” AR 951. On July 19, 2016, Dr. Fong found Plaintiff’s right 2<sup>nd</sup> mcp tender with no swelling, a right ankle with mild warmth/swelling and tenderness, forefeet and toes with “mcp and ip” swelling and tenderness, and some sausage digits. AR 1087.

Third, the ALJ discounted Dr. Fong’s opinion as inconsistent with the objective findings in the record as a whole that showed many mild and moderate findings. AR 31. An ALJ may discredit treating physicians’ opinions that are unsupported by the record as a whole. *See Batson v. Comm’r*, 359 F.3d 1190, 1195 (9th Cir. 2004) (citation omitted). As detailed above, the ALJ properly determined that Plaintiff’s physical examinations revealed positive findings that were often mild or moderate. The Court therefore finds that the ALJ did not commit reversible error in discounting the opinions of Dr. Fong.

### **C. Evaluation of Psychological Physicians – Mental Impairment**

Plaintiff asserts that the ALJ committed harmful error by rejecting the opinions of the treating psychological physician of record, Dr. Amirali Sayadipour. Plaintiff also asserts that the ALJ committed harmful error in evaluating the opinions of the examining physicians, Dr. Elke Kurpiers and Dr. Roger Izzi. (Doc. 22 at 34-38.)

#### *Dr. Sayadipour*

On March 15, 2017, Dr. Sayadipour wrote a letter at Plaintiff’s request, which identified a treatment history and indicated that Plaintiff had been diagnosed with “Depressive Disorder to another



1 medical condition with major depressive like episode” and anxiety disorder due to another medical  
2 condition. AR 3076. Dr. Sayadipour reported that Plaintiff had been compliant with psychiatric  
3 treatment and her symptoms “caused clinically significant distress and impairment in her social and  
4 occupation functioning.” *Id.*

5 *Dr. Kurpiers*

6 On November 4, 2016, Dr. Kurpiers completed a consultative psychological evaluation. On  
7 mental status examination, Plaintiff had a flat affect, and her mood was dysphoric and despondent.  
8 She was coherent, alert and grossly oriented and her intellectual abilities were estimated to be within  
9 normal range. During cognitive screening, she seemed to give up easily at times. She was mildly  
10 inattentive and needed redirection. She also was unable to solve two-digit addition, subtraction,  
11 multiplication, and division problems. Plaintiff presented with subdued and hopeless demeanor and  
12 impressed as socially withdrawn. Dr. Kurpiers opined that Plaintiff’s ability to remember, carry out  
13 simple tasks, and concentrate was decreased due to emotional factors and decreased concentration.  
14 Her ability to persist for a normal workday, socialize and adapt to a normal work environment  
15 appeared severely impaired. Dr. Kurpiers identified the following mental problems as limitations:  
16 depression, anxiety, fear around strangers, decreased self-esteem and body image changes. AR  
17 2712-16.

18 *Dr. Izzi*

19 On May 19, 2018, Dr. Izzi completed a consultative psychological evaluation. On mental  
20 status examination, Plaintiff was alert, with a dysphoric affect. She had no obvious speech or  
21 language problems and there were no gross indications of psychosis or schizophrenia. AR 3069-70.  
22 Psychological testing revealed a present level of intellectual functioning within the borderline range  
23 and deficits in memory functions. AR 3070-71.

24 Dr. Izzi also completed a Medical Source Statement of Ability to Do Work-Related Activities  
25 (Mental) form. He identified only mild impairment in the ability to understand and remember simple  
26 instructions, to carry out simple instructions, to make judgments on simple work-related decisions, to  
27 understand and remember complex instructions, to carry out complex instructions, and to make  
28 judgments on complex work-related decisions. AR 3072. Dr. Izzi indicated that Plaintiff had



1 moderate impairment in the ability to interact appropriately with the public, supervisors, and co-  
2 workers and to respond appropriately to usual work situations and to changes in a routine work setting.  
3 AR 3073-74.

4 Plaintiff challenges the ALJ's decision to assign little weight to the opinions of Drs.  
5 Sayadipour, Kurpiers and Izzi. As referenced above, the Commissioner must provide "clear and  
6 convincing" reasons for rejecting the uncontradicted opinion of a treating or examining physician.  
7 *Lester*, 81 F.3d at 830. If contradicted, the opinion of a treating or examining physician can only be  
8 rejected for "specific and legitimate reasons" that are supported by substantial evidence in the record.  
9 *Id.* at 830-31. The opinion of a nonexamining physician alone is not substantial evidence that justifies  
10 the rejection of the opinion of either a treating or examining physician. *Id.* at 831.

11 Here, the limitations imposed by Drs. Sayadipour, Kurpiers and Izzi arguably were  
12 contradicted by the opinions of the state agency physicians. On November 19, 2016, Dr. Catherine  
13 Blusiewicz, a state agency consultant, opined that Plaintiff could understand and carry out both simple  
14 and low-level detailed tasks for a 2-hour period during a normal workday. She also could complete a  
15 normal workday and week without interference from psychological symptoms. AR 104, 121-22. On  
16 January 3, 2017, Dr. E. Murillo, also a state agency consultant, opined that Plaintiff could understand  
17 and carry out both simple and low-level detailed tasks for 2-hour period during a normal workday.  
18 She could complete a normal workday and week without excessive interference from psychological  
19 symptoms. She could accept supervision and interact with coworkers and the public. Her contact with  
20 the public should be limited in nature. She could adapt to change and avoid hazards. AR 139, 155. In  
21 light of these opinions, the ALJ was required to provide specific and legitimate reasons supported by  
22 substantial evidence in the record to discount the opinions of Drs. Sayadipour, Kurpiers and Izzi.

23 With respect to Dr. Sayadipour, the ALJ assigned little weight to Dr. Sayadipour's opinion that  
24 Plaintiff had significant impairment in her social and occupational functioning. The ALJ reasoned that  
25 the opinion was not supported by objective evidence and was inconsistent with the record as whole,  
26 including objective findings that showed many normal and mild mental status evaluations. AR 31-32.  
27 An ALJ may discredit treating physicians' opinions that are unsupported by the record as a whole. *See*  
28 *Batson*, 359 F.3d at 1195. As discussed above in connection with Plaintiff's subjective complaints,

1 the ALJ's determination that Plaintiff's mental status examinations were generally normal is supported  
 2 by substantial evidence in the record.<sup>6</sup> The ALJ therefore properly discounted Dr. Sayadipour's  
 3 opinion.

4 Similarly, with respect to Dr. Kurpiers, the ALJ properly assigned little weight to her opinion  
 5 that Plaintiff had a severe limitation in the ability to persist for a normal workday, socialize and adapt  
 6 to a normal work environment, because that opinion was inconsistent with the record as whole. AR  
 7 32. Insofar as the ALJ also discounted Dr. Kurpiers' opinion because she appeared "to have accepted  
 8 the claimant's subjective complaints despite the lack of mental health treatment records available,"  
 9 (AR 32), this is not a clear and convincing reason supported by substantial evidence necessary to  
 10 reject Dr. Kurpiers' opinion. *See Ryan v. Comm'r of Soc. Sec.*, 528 F.3d 1194, 1199 (9th Cir. 2008)  
 11 (finding ALJ could not reject psychiatric evaluation opinion as based too heavily on [claimant's]  
 12 subjective complaints). Nevertheless, the ALJ correctly noted that Dr. Kurpiers' opinion did not  
 13 include a review of extensive mental health treatment records. AR 2712.

14 With respect to Dr. Izzi's opinion, the ALJ assigned little weight to his identification of mild  
 15 limitations in concentration and moderate social impairments. The ALJ first found the moderate  
 16 limitations inconsistent with Dr. Izzi's own examination findings, which noted that Plaintiff spent time  
 17 with friends and family, had no speech or language problems, and her intellectual functioning tested in  
 18 the Borderline range. AR 32, 3068-70. An ALJ may reject a doctor's opinion that is inconsistent with  
 19 the doctor's own findings. *Johnson v. Shalala*, 60 F.3d 1428, 1432-33 (9th Cir. 1995). Moreover, the  
 20 ALJ found greater limitations in concentration, but only mild social limitations based upon the record  
 21 as whole, including Plaintiff's statements and presentation at the hearing. AR 32. To the extent Dr.  
 22 Izzi's opinion regarding moderate social impairments was inconsistent with the record, including  
 23 Plaintiff's testimony that she lives and visits with family, (AR 46), this is a specific and legitimate  
 24 reason supported by substantial evidence to discount Dr. Izzi's opinion. *See Batson*, 359 F.3d at 1195.

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26  
 27 <sup>6</sup> Further, the ALJ permissibly considered Plaintiff's Global Assessment of Functioning ("GAF") score of 51-60, which  
 28 indicated moderate symptoms. AR 32, 96, 113, 2716. *See Morgan v. Comm'r of Soc. Sec. Admin.*, 169 F.3d 595, 598-99  
 (9th Cir. 1999) (affirming ALJ finding of non-disability where record contained GAF scores ranging from 45 to 61).

**CONCLUSION**

Based on the foregoing, the Court finds that the ALJ's decision is supported by substantial evidence in the record as a whole and is based on proper legal standards. Accordingly, this Court DENIES Plaintiff's appeal from the administrative decision of the Commissioner of Social Security. The Clerk of this Court is DIRECTED to enter judgment in favor of Defendant Kilolo Kijakazi, Acting Commissioner of Social Security, and against Plaintiff Maral Artine Sagherian.

IT IS SO ORDERED.

Dated: September 29, 2021

/s/ Barbara A. McAuliffe  
UNITED STATES MAGISTRATE JUDGE